UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 24 2005

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Dear Counselors:

On May 31, 2005, EPA received two petitions for reconsideration of the final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-fired Electric Utility Steam Generating Units from the Section 112(c) List" (the "final Section 112 rule").[1] See 70 Fed. Reg. 15,994 (Mar. 29, 2005). This letter contains EPA's preliminary response regarding those petitions.

Generally, petitioners claim that the final Section 112 rule contains legal interpretations and information that are of central relevance to the final rule, but that were not sufficiently reflected in the proposed rule. Petitioners further contend that they believe that additional information is, or has become, available since the public comment period, and that this information, too, is of central relevance. Finally, petitioners conclude that they did not have an adequate opportunity to provide input on these matters during the designated public comment periods.

EPA recognizes the high degree of public interest in this rule. The public had three opportunities to submit comments, following the January 30, 2004 Notice of Proposed

[1] One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The other petition was submitted by five environmental groups and four Indian Tribes: Natural Resources Defense Council, Clean Air Task Force, Ohio Environmental Council, U.S. Public Interest Group and Natural Resources Council of Maine; Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Penobscot Indian Nation and Passamaquoddy Tribe of Maine. Both groups are referred herein as "petitioners."

Rulemaking, the March 16, 2004 Supplemental Notice of Proposed Rulemaking, and the December 1, 2004 Notice of Data Availability. EPA received, reviewed, and responded to thousands of documents. Thus, a robust public discussion of the rule has already occurred. Nonetheless, in the interest of ensuring ample opportunity to comment on this important rule, we plan to initiate a reconsideration process. The particular issues EPA plans to reconsider, and the specifics of the reconsideration process, will be set out in a forthcoming Federal Register notice. We are sending this letter now because we wanted to inform you promptly that we are initiating the reconsideration process.

Without prejudging any information that petitioners and other members of the public may provide in the reconsideration process, our preliminary review of the petitions has not persuaded us that our final decisions were erroneous or inappropriate. We will, of course, consider objectively all information generated during the reconsideration process. Our initiation of the reconsideration process, however, should not be taken as an indication that we agree with petitioners' claims.

Petitioners also requested that EPA stay the effect of the final Section 112 rule under Clean Air Act ("CAA") section 307(d)(7)(B) pending administrative reconsideration. For the reasons set forth below, EPA denies all pending stay requests.[2]

EPA promulgated both the final Section 112 rule and the Clean Air Mercury Rule ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2003), after an exhaustive rulemaking process during which EPA received and considered thousands of comments. These rules represent the first time that EPA has regulated utility mercury emissions. When fully implemented, CAMR will reduce emissions of mercury from U.S. coal-fired power plants by 70 percent. Through CAMR, EPA has created strong incentives for the development of new and highly effective mercury control technologies that can be used both in the U.S. and in other countries to combat the global mercury problem.

Staying the Section 112 rule would be a step backward, not forward, in our efforts to reduce utility mercury emissions. There are no pre-existing federal mercury emission standards for existing coal-fired utilities. Thus, because staying the final Section 112 rule would necessitate staying the final CAMR rule, a stay would leave existing U.S. coal-fired power plants free from direct federal regulation of mercury emissions. Regardless of the outcome of the reconsideration process, it is important to keep regulations addressing utility mercury emissions in place, so the states and industry can start planning accordingly and mercury reductions can be realized as soon as reasonably practicable.[3] Again, the final Section 112 rule is part of a larger

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[2] On March 30, 2005, EPA received a letter from four environmental groups requesting a stay of the effective date of the final Section 112 rule under the Administrative Procedure Act ("APA"), 5 U.S.C. § 705, or, alternatively, CAA § 307(d)(7)(B) ("Stay Letter"). The letter was sent on behalf of the Chesapeake Bay Foundation, the Clean Air Task Force, the National Wildlife Federation and the Natural Resources Defense Council.

[3] Even if one believes that CAMR should have been more stringent, that belief would not justify staying the rule. As EPA said in the preamble to the final rule, if future information demonstrates that additional control is warranted, EPA is committed to reopening and reevaluating the CAMR standards.

approach which for the first time imposes a control program, with regulatory deadlines, on mercury emissions from the fleet of U.S. coal-fired power plants. Thus, EPA believes the public interest would be best served by moving forward with our rules, not by delaying their benefits through a stay.

Thank you for your interest in the final Section 112 rule. EPA looks forward to any comments you may supply during the reconsideration process.

Sincerely,

Jeffrey R. Holmstead
Assistant Administrator

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